

#### REMARKS

The Examiner is thanked for the thorough consideration given the present application. Claims 1-12 are currently being prosecuted. The Examiner is respectfully requested to reconsider the rejections in view of the Amendments and Remarks as set forth hereinbelow.

#### ALLOWABLE SUBJECT MATTER

It is gratefully acknowledged that the Examiner considers the subject matter of claim 5 as being allowable if rewritten in independent form. Although not conceding the appropriateness of the Examiner's rejections, claim 8 includes the subject matter of claims 1, 3 and 5. By rewriting claim 5 in independent form as newly presented claim 8, claims 8-12 are now in condition for allowance.

#### CLAIM FOR PRIORITY

The Examiner has not recognized the claim for foreign priority. In view of the fact that the claim for foreign priority has been perfected by the WIPO PCT International Bureau, the Examiner is respectfully requested to acknowledge the claim for foreign priority in the next Office Action.

### DRAWINGS

The Examiner has not approved the Formal Drawings. It is respectfully submitted that the drawings comply with the requirements of the USPTO. If the Examiner has any objections to the Formal Drawings please contact the undersigned as soon as possible so that appropriate action may be taken. No further action is believed to be necessary at this time unless the undersigned receives a notice from the Examiner.

### ACKNOWLEDGEMENT OF INFORMATION DISCLOSURE STATEMENT

The Examiner has acknowledged the Information Disclosure Statements filed on August 10, 2006 and November 13, 2006. Initialed copies of the PTO/SB/08A have been received from the Examiner. No further action is necessary at this time.

### REJECTION UNDER 35 USC 102

Claims 1, 3, 4 and 6 stand rejected under 35 USC 102 as being anticipated by Kamen, US 4,137,915. This rejection is respectfully traversed.

At the outset, claim 1 has been amended to include a combination of elements including a drug solution injector including a drug solution reservoir having a chamber for storing a drug solution therein and a pressurization mechanism for continually discharging the stored drug solution to the outside. An injection line is connected to the drug solution reservoir to inject the drug solution into the body. The drug solution reservoir is secured to a weighing scale for measuring a weight of the drug solution stored in the drug solution

reservoir. The drug solution injector is manually held with the drug solution reservoir being inverted to extend downwardly for enabling the weight of the drug solution stored in the drug solution reservoir to be visually determined by the weighing scale along a predetermined length of the injection line connected to the drug solution reservoir.

It is respectfully submitted that claims 1, 3, 4 and 6 are not anticipated by the prior art cited by the Examiner. As set forth in Section 2131 of the MPEP Original Eight Edition, August 2001 Latest Revision February, 2003, page 2100-70:

“A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros. V. Union Oil Co. Of California*, 814 F2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987).... “The identical invention must be shown in as complete detail as is contained in the ... claims.” *Richardson v. Suzuki Motor Co.*, 868 F2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).

It is respectfully submitted that the Kamen patent is directed to a flow control system for a conventional intravenous feeding apparatus. The flow control 10 is used in conjunction with an electric circuit 48 for controlling the movement of the plunge 56 for regulating the fluid flow in the tube 18. The Examiner's attention is respectfully directed to column 3, lines 29-46 of the Kamen patent that describes the operation of the movable tube 22. As stated in column 3, lines 39-46:

In the specific condition of the components illustrated in FIG. 1, spring 28 attached to the elevated nut 34 is thus in a state of expansion which induces a force urgency in the direction 38 which is in opposition to the intravenous fluid weight 26 exerted in the direction 24. The urgency of spring 28 versus the fluid weight 26 can thus be thought of as being in equilibrium as depicted in FIG. 1.

If the Examiner reviews the description of operation of the flow control device disclosed in Kamen as discussed in column 4, line 64 and continuing to column 5, line 30, it is clear that the spring 28 is not designed to weigh the contents of the bag 12. The spring 28 is designed as a counterbalance for the intravenous weight 26 disposed within the bag 12.

It is respectfully submitted that the Kamen patent does not set forth each and every element as defined in the claims. Thus, the Examiner's rejection based on 35 USC 102 has been obviated.

#### REJECTION UNDER 35 USC 103

Claims 2 and 7 stand rejected under 35 USC 103 as being unpatentable over Kamen in view of Martin, US 4,722,732. This rejection is respectfully traversed.

The Martin patent was relied on for a disclosure of a drug supply system wherein the drug reservoir is an elastomeric balloon enclosed within a housing 12. Since the Martin patent does not overcome the deficiencies of the Kamen patent as discussed above nor does it render obvious the subject matter as set forth in amended claim 1, the Examiner's rejection based on 35 USC 103 has been obviated.

In addition, as the Examiner knows, to establish a prima facie case of obviousness, three basic criteria must be met.

- 1.) First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings.

- 2.) Second, there must be a reasonable expectation of success.
- 3.) Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations.

As set forth in section 2143 of the M.P.E.P., the following are examples of basic requirements of a prima facie case of obviousness:

“The Supreme Court in *KSR International Co. v. Teleflex Inc.*, 550 U.S. \_\_\_, \_\_\_, 82 USPQ2d 1385, 1395-97 (2007) identified a number of rationales to support a conclusion of obviousness which are consistent with the proper “functional approach” to the determination of obviousness as laid down in *Graham*. The key to supporting any rejection under 35 U.S.C. 103 is the clear articulation of the reason(s) why the claimed invention would have been obvious. The Supreme Court in *KSR* noted that the analysis supporting a rejection under 35 U.S.C. 103 should be made explicit.”

One of these exemplary rationales that may support a conclusion of obviousness set forth in subparagraph “C” relates to use of known technique to improve similar devices (methods, or products) in the same way.

“To reject a claim based on this rationale, Office personnel must resolve the *Graham* factual inquiries. Then, Office personnel must articulate the following:

(1) a finding that the prior art contained a “base” device (method, or product) upon which the claimed invention can be seen as an “improvement;”

(2) a finding that the prior art contained a “comparable” device (method, or product that is not the same as the base device) that has been improved in the same way as the claimed invention;

(3) a finding that one of ordinary skill in the art could have applied the known “improvement” technique in the same way to the “base” device (method, or product) and the results would have been predictable to one of ordinary skill in the art; and

(4) whatever additional findings based on the Graham factual inquiries may be necessary, in view of the facts of the case under consideration, to explain a conclusion of obviousness.

The rationale to support a conclusion that the claim would have been obvious is that a method of enhancing a particular class of devices (methods, or products) has been made part of the ordinary capabilities of one skilled in the art based upon the teaching of such improvement in other situations. One of ordinary skill in the art would have been capable of applying this known method of enhancement to a "base" device (method, or product) in the prior art and the results would have been predictable to one of ordinary skill in the art. The Supreme Court in KSR noted that if the actual application of the technique would have been beyond the skill of one of ordinary skill in the art, then using the technique would not have been obvious. KSR, 550 U.S. at \_\_\_, 82 USPQ2d at 1396. If any of these findings cannot be made, then this rationale cannot be used to support a conclusion that the claim would have been obvious to one of ordinary skill in the art." (emphasis added)

It is respectfully submitted that the Examiner has failed to articulate each and every one of items (1) to (4) above as is required.

In view of the above, the Examiner has failed to establish a prima facie case of obviousness. Therefore, the claims are now in condition for allowance.

#### REQUEST FOR INTERVIEW

If the Examiner has any questions with regard to this application please contact the undersigned so that an interview can be arranged in connection with this application.

#### CONCLUSION

In view of the above remarks, it is believed that the claims clearly distinguish over the patents relied on by the Examiner, either alone or in combination.

Since the remaining patents cited by the Examiner have not been utilized to reject the claims, but to merely show the state of the art, no comment need be made with respect thereto.

In view of the above amendments and remarks, reconsideration of the rejections and allowance of all of the claims are respectfully requested.

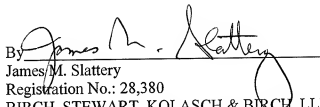
All of the stated grounds of rejection have been properly traversed, accommodated, or rendered moot. It is respectfully request that the Examiner reconsider and withdraw all presently outstanding rejections. A full and complete response has been made to the outstanding Office Action. The present application is now in condition for allowance.

A prompt and favorable consideration of this Amendment is respectfully requested.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37.C.F.R. §§1.16 or 1.17; particularly, extension of time fees.

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Respectfully submitted,

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